

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JAMES EARNEST DICKERSON,

Petitioner,

v.

CAROL PORTER,
SUPERINTENDENT, W.C.C.,

Respondent.

No. C05-5793RJB

ORDER DENYING PETITIONER'S
REQUEST TO REMOVE JUDGE BRYAN

This matter comes before the Court under Local General Rule 8(c). Petitioner James Earnest Dickerson filed a pro se "Motion to Recuse" (Dkt. #123) and supporting Memorandum (Dkt. #124). The Honorable Robert J. Bryan, United States District Judge, declined to recuse himself voluntarily and the matter was referred to the Chief Judge for review (Dkt. #127). Petitioner's motion is therefore ripe for review by this Court.

Section 455 of title 28 of the United States Code governs the disqualification of a district judge. It states in relevant part: "Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned." Additionally, 28 U.S.C. § 144, pertaining to judicial bias or prejudice, provides:

Whenever a party to any proceeding in a district court makes and files a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party, such judge shall proceed no further therein, but another judge shall be assigned to hear such

ORDER

1 proceeding. The affidavit shall state the facts and the reasons for the belief that
2 bias or prejudice exists[.]

3 A judge must recuse himself if a reasonable person would believe that he is unable to be
4 impartial. Yagman v. Republic Ins., 987 F.2d 622, 626 (9th Cir. 1993). This is an objective
5 inquiry regarding whether there is an appearance of bias, not whether there is bias in fact.
6 Preston v. United States, 923 F.2d 731, 734 (9th Cir. 1991); United States v. Conforte, 624 F.2d
7 869, 881 (9th Cir. 1980); see also Liteky v. United States, 510 U.S. 540, 555 (1994) (explaining
8 the narrow bases for recusal). A litigant cannot, however, use the recusal process to remove a
9 judge based on adverse rulings in the pending case: the alleged bias must result from an
10 extrajudicial source. United States v. Studley, 783 F.2d 934, 939 (9th Cir. 1986).¹

12 Petitioner argues that Judge Bryan's decisions dismissing his petition and refusing
13 petitioner's protective order "shows bias" and that petitioner's conviction constituted a fraud
14 against the court. See Dkt. #123. Petitioner does not identify any extrajudicial source of the
15 alleged prejudice: the only suggestion of bias is the judge's earlier decisions. In such
16 circumstances, the risk that the litigant is using the recusal motion for strategic purposes is
17 considerable. See Ex Parte Am. Steel Barrel Co. and Seaman, 230 U.S. 35, 44 (1913). Because
18 a judge's conduct in the context of judicial proceedings does not constitute the requisite bias
19 under § 144 or § 455 if it is prompted solely by information that the judge received in the
20 context of the performance of his duties as the presiding judicial officer, petitioner has not met
21 the burden of showing an appearance of bias.
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25 ¹ Objections to a judge's decisions are properly raised through an appeal, not a motion to recuse.
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1 Having reviewed petitioner's motion and the remainder of the record, the Court finds that
2 Judge Bryan's impartiality cannot reasonably be questioned. There being no evidence of bias or
3 prejudice, petitioner's request to remove Judge Bryan from this matter is DENIED.
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5 DATED this 13th day of September, 2006.
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9 Robert S. Lasnik
10 United States District Judge
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